**DISTRICT OF COLUMBIA**
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**
Office of Dispute Resolution
810 First Street, N.E., 2nd Floor
Washington, D.C. 20002

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| *Student*,[1] through *Parent*, *Petitioner*, | ) | Case No.: 2017-0242 |
| | ) | Date Issued: 10/19/17 |
| v. | ) | Hearing Officer: Keith L. Seat, Esq. |
| District of Columbia Public Schools ("DCPS"), Respondent. | ) | Hearing Dates: 10/16/17 |
| | ) | Hearing Room: 2004 |

# HEARING OFFICER DETERMINATION

## Background

Petitioner, Student's Parent, pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") because Student had not been evaluated following requests from Parent or based on other indicia of a need for evaluation. DCPS responded that no request had been made by Parent and that DCPS appropriately addressed Student's behavioral issues through counseling.

## Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

## Procedural History

Following the filing of the due process complaint on 9/5/17, the case was assigned to the undersigned on 9/6/17. DCPS filed a response on 9/8/17, and an amended response on 10/2/17, and did not challenge jurisdiction. The resolution session meeting was waived by the parties on 9/22/17. The 30-day resolution period ended on 10/5/17. A final decision in

[1] Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination ("HOD") by 11/19/17.

The due process hearing took place on 10/16/17, and was closed to the public. Petitioner was represented by *Petitioner's counsel*. DCPS was represented by *Respondent's counsel*. Petitioner was present throughout the entire hearing.

Petitioner's Disclosures, submitted on 10/10/17, contained documents P1 through P13, which were admitted into evidence over a number of objections. Respondent's Disclosures, submitted on 10/10/17, contained documents R1- R5, which were admitted into evidence without objection.

Petitioner's counsel presented 2 witnesses in Petitioner's case-in-chief (*see* Appendix A):

1. Parent

2. *Educational Advocate* (qualified without objection as an expert in Special Education Programming)

Respondent's counsel presented 1 witness in Respondent's case (*see* Appendix A): *School Psychologist* (qualified without objection as an expert in School Psychology).

The single remaining issue[2] to be determined in this Hearing Officer Determination is:

**Issue:** Whether DCPS denied Student a FAPE by failing to adequately and comprehensively evaluate Student in all areas of suspected disability upon request of Parent and/or pursuant to its Child Find obligations in 2015/16[3] and 2016/17. *Petitioner has the burden of persuasion on this issue.*

Petitioner seeks the following relief[4]:

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[2] At the beginning of the due process hearing, Petitioner expressly withdrew Issue 2 without prejudice, which was "Whether DCPS denied Student a FAPE by failing to provide prior written notices of its refusals to evaluate Student upon the request of Parent in 2015/16 and 2016/17." Previously at the prehearing conference, Petitioner had expressly withdrawn without prejudice a third issue, which was "Failure to comply with disciplinary regulations. *34 C.F.R. §§ d300.530-536*."

[3] All dates in the format "2015/16" refer to school years. At the prehearing conference, Petitioner clarified that she is asserting claims only for the last two years.

[4] At the prehearing conference, Petitioner expressly withdrew, without prejudice, paragraph 1.c. from p.4 of the due process complaint, which stated that "DCPS will convene an MDT meeting to review all evaluations and develop an IEP, to include placement/location of services."

1. A finding that Student was denied a FAPE.
2. Within 10 business days, DCPS shall fund at reasonable market rates an independent comprehensive psychological evaluation.[5]
3. Compensatory education for any denial of FAPE is reserved pending the completion of Student's evaluation and a determination of eligibility for special education services.[6]

## Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, the Findings of Fact[7] are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.[8] Student is *Age, Gender* and in *Grade* at *Public Charter School*, where Student began in 2017/18.[9] In 2015/16 and 2016/17, Student attended *Recent Public School*; prior to 2015/16, Student attended *Prior Public School* for several years.[10] Student has not been formally evaluated by DCPS and there has been no consideration of eligibility for special education and related services.[11]

2. Behavioral Concerns. In 2012/13, Student was referred for counseling services by a teacher who rated the referral "very urgent," a 9 on a scale of 10; in addition to 6 academic concerns, the teacher noted 7 behavior concerns ranging from "Argumentative" and "Attention seeking" to "Physically assaults others/fighting" and "Threatening/intimidating

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[5] At the beginning of the due process hearing, Petitioner's counsel wavered on whether to continue to seek an independent functional behavioral assessment ("FBA") at the hearing, which had been included as part (b) in this request for relief. There was no discussion of an independent FBA during the hearing until closing arguments when Petitioner's counsel concluded that there was no need for an independent FBA and withdrew it as requested relief.

[6] At the prehearing conference, Petitioner expressly stated that [redacted] would not be seeking compensatory education during the due process hearing and desired all compensatory education to be reserved until after the completion of evaluations.

[7] Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

[8] Parent.

[9] *Id.*

[10] Parent; Educational Advocate.

[11] *Id.*

remarks/bullying."[12] The referring teacher noted challenges with Student "doing no work" and that Student sometimes became physical, kicking and hitting peers.[13] Even prior to 2012/13, Student exhibited serious problems, as Student had urinated on one child and sexually assaulted another.[14]

3. In 2014/15, Student was referred to Prior Public School's mental health team for counseling; the team sent Parent a counseling permission form, which she signed.[15] On 4/2/15, ChAMPS provided crisis screening for Student and created a crisis support plan for the future.[16] In the plan, Student wrote (by hand) that crises were triggered when "my techer say's mean things to m[e]," "my techer does mean things to [me]," and "when some one grabs me without aski[ng]."[17] Student wrote (by hand) warning signs of a crisis were that "I ball up my fist" and "I make a tarifing [terrifying?] frown."[18]

4. In 2014/15, Student had 31 infractions (as of 4/7/15), including 8 off-site suspensions, ranging from fighting and injuring another student to angrily kicking and shattering a school window.[19] As of 4/21/15, Student had missed 17 school days in 2014/15 due to suspensions.[20]

5. Prior Public School conducted an FBA dated 4/21/15 because Student displayed attention seeking, instigating, and physically and verbally aggressive behaviors towards students and adults, as well as unsafe behaviors; the problem behaviors occurred daily, were of moderate to severe intensity and varied in duration from "minutes to all day."[21] Consistent with parent and teacher reporting, student records and observation, the teacher's Strengths and Difficulties Questionnaire ("SDQ") in the FBA showed Very High scores for Student on overall stress, behavioral difficulties, and difficulties getting along with other children.[22] The FBA's first recommendation was that a multi-disciplinary team ("MDT") should meet to "consider the implications" of the assessment.[23]

6. Mental Health Provider conducted a mental health evaluation and diagnosed Student with Oppositional Defiant Disorder ("ODD"); Parent gave the evaluation to the Prior Public School principal who replied that it had nothing to do with school and that Parent needed to get outside help for Student, or else Prior Public School would call Child Protective

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[12] P1-1.
[13] P1-2.
[14] Educational Advocate.
[15] P2-1.
[16] P3-1.
[17] P3-2.
[18] *Id.*
[19] P6-1,2,3.
[20] P4-3; P5-1,3 (off-site suspensions for incidents on 1/9/15, 4/17/15, 4/23/15).
[21] P4-1,2.
[22] P4-3.
[23] *Id.*

Services due to neglect.[24] As a result of Student's behavior, Student was asked not to return to Prior Public School for 2015/16.[25]

7. Parent enrolled Student in the neighborhood school, Recent Public School, but Student's 2 years there were even worse than at Prior Public School, as Student was more aggressive.[26] Recent Public School did not provide paperwork for suspensions; instead, the dean would call frequently – Parent estimated 3 times/week – to report when Student had been removed from the classroom for in-school suspensions or to require Parent to come pick up Student and refusing to allow Student to return until the dean said so.[27] During this time, Student was receiving counseling/behavior support both at Recent Public School and Mental Health Provider, but Parent did not consider the efforts sufficient.[28] Student's behavior at Recent Public School was so bad that Recent Public School would not let Student participate in end-of-year proceedings and festivities with peers in 2016/17.[29]

8. Academic Impact. Student's behaviors made it difficult for Student, and sometimes peers, to learn.[30] When ignored, Student's behaviors escalated, furniture was "disrupted," and Student left the room or the office provided support.[31] Student's work completion rate was low, although Student was academically capable; as of 4/21/15 Student was meeting grade level expectations, but Student's behaviors were "beginning to negatively impact" academics.[32] During the FBA classroom observation, Student was measured as being off task 100% of the time.[33] School Psychologist noted in an email to Parent on 3/15/16 that Student's issues went beyond being defiant and disrespectful to "not producing any work."[34] Student had trouble doing school work and hardly did any work, as Student was regularly sent home or was out of the classroom when at school, often in in-school suspension or walking the halls.[35]

9. Student's end-of-year report card in 2016/17 reported that Student received Below Basic – the lowest rating – in both reading and math for the 4th term; the only subject above Basic was Health & Physical Education; in 6 of the 10 subjects, Student's 4th term rating was lower than earlier in the year, while none was higher.[36]

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[24] Parent.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Educational Advocate; P4-1.
[31] P4-1,3.
[32] P4-2.
[33] P4-3.
[34] R4-1.
[35] Parent.
[36] P13-1.

10. Evaluation Requests. Parent testified that she asked for Student to be evaluated at Prior Public School "many times," making requests to the principal, a counselor and another staffer, but was told that Student was "too smart" and didn't qualify because there was "nothing wrong" with Student.[37] Student had a "504 plan" with a narrow solution to a specific medical condition that did not address Student's academic and behavioral needs.[38]

11. Parent credibly testified that at Recent Public School she first asked for an evaluation of Student in August 2015 when first enrolling Student for 2015/16; Parent talked with School Psychologist and gave her background material about Student, which "probably" included the Mental Health Provider evaluation diagnosing ODD, the 2015 FBA and other information.[39] Parent also often asked for an evaluation of Student when Parent spoke with School Psychologist at school meetings about Student, but School Psychologist told Parent that Student didn't qualify for an IEP.[40] Parent did not speak to anyone at Recent Public School other than School Psychologist about an evaluation for Student and never sought an evaluation in writing.[41] Parent was confident that Recent Public School understood that she wanted an evaluation and IEP for Student.[42]

12. On the other hand, School Psychologist unambiguously testified that she met with Parent only one time in person, in an impromptu meeting that School Psychologist required after Student had been disrespectful to her.[43] School Psychologist was certain that she had not met Parent when Student was first being enrolled at Recent Public School in August 2015 or any other time; School Psychologist was certain that Parent had never asked for Student to be evaluated in August 2015 or any other time.[44] In response to the undersigned's query about how School Psychologist could be sure that she had only met Parent once and that Parent never sought an evaluation, School Psychologist responded that she was certain that Parent did not request an evaluation because that would have triggered a referral meeting; since a referral meeting was never held for Student, School Psychologist was sure there could not have been a request for an evaluation.[45]

13. School Psychologist doesn't think that Student needs an IEP, but that issue never came up with Parent.[46] Student was involved in the Response to Intervention ("RTI") process relating to counseling for Student's behavior, but not for academics because teachers stated that Student did not need academic support.[47] School Psychologist testified that she never received Student's ODD diagnosis, but that would not be a basis for an IEP,

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[37] Parent.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] School Psychologist.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*

as ODD is a conduct disorder.[48] On cross-examination, School Psychologist acknowledged that ODD and Emotional Disturbance ("ED") are not mutually exclusive, but that she can tell with many students if they are ED; School Psychologist did not view Student as being ED.[49] According to School Psychologist, Student simply refused to do the work, even though Student is capable of doing it; Student is just socially maladjusted.[50]

14. Educational Advocate, a former director and principal of special education schools for many years, credibly testified that in her expert opinion an evaluation of Student should have been conducted by Recent Public School to find out what was going on, as Student's behavior was interfering with learning and something needed to be done.[51] Even if Parent had not asked, the "glaring need" for an evaluation was apparent; a comprehensive psychological evaluation was "absolutely required."[52] Educational Advocate considered the background information in P1 through P6, which Recent Public School should have had, to be sufficient without more to trigger DCPS's obligation to evaluate Student.[53]

15. Evaluation Availability. Educational Advocate credibly testified that Parent would not have a reasonable choice of providers – and maybe no provider at all – if an independent comprehensive psychological evaluation was limited to the "OSSE rate" that DCPS relies on in its *Parent Guide*, but Parent would have a choice of providers if the comprehensive psychological evaluation were authorized at a rate of $3,000 or $3,500.[54] The DCPS *Parent Guide* purports to list providers who are willing to accept the OSSE rate, but Educational Advocate repeatedly contacted every provider of comprehensive psychological evaluations in the *Parent Guide* and found no one willing to accept the OSSE rate (whether $1,360.32 as stated in the *Parent Guide* at P11-19 or $1,525).[55] Only 2 providers from the list of 7 in the *Parent Guide* were available and willing to conduct a comprehensive psychological evaluation at any price; one stated that on top of the OSSE rate he required an additional payment of $1,500 to $2,000 to make up the difference; the other testified that she might sometimes be willing to take the OSSE rate, depending on the circumstances of the case and identity of counsel involved.[56]

[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Educational Advocate.
[52] *Id.*
[53] *Id.*
[54] Educational Advocate; P11-35.
[55] Educational Advocate; P11.
[56] Educational Advocate; P11-35.

## Conclusions of Law

Based on the Findings of Fact above, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law are as follows:

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

"The IEP is 'the centerpiece of the statute's education delivery system for disabled children.'" *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L.Ed.2d 686 (1988). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, DCPS must devise an IEP, mapping out specific educational goals and requirements in light of the child's disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

The IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 1001. The Act's FAPE requirement is satisfied "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Smith v. Dist. of Columbia*, 846 F. Supp. 2d 197, 202 (D.D.C. 2012), *citing Rowley*, 458 U.S. at 203. The IDEA imposes no additional requirement that the services so provided be sufficient to maximize each child's potential. *Rowley*, 458 U.S. at 198. In its recent decision, the Supreme Court made very clear that the standard is well above *de minimis*, however, stating that "[w]hen all is said and done, a student offered an educational program providing 'merely more than *de minimis*' progress from year to year can hardly be said to have been offered an education at all." *Endrew F.*, 137 S. Ct. at 1001.

A Hearing Officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a). In other words, an

IDEA claim is viable only if those procedural violations affected the child's *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a prima facie case. D.C. Code Ann. § 38-2571.03(6); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). "Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5-E D.C.M.R. § 3030.3.

**Issue:** *Whether DCPS denied Student a FAPE by failing to adequately and comprehensively evaluate Student in all areas of suspected disability upon request of Parent and/or pursuant to its Child Find obligations in 2015/16 and 2016/17. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of proof on this issue of DCPS failing to meet its obligation to evaluate Student, thereby denying Student a FAPE. As the U.S. Court of Appeals for the District of Columbia Circuit recently emphasized in *DL v. Dist. of Columbia*, 860 F.3d 713, 717 (D.C. Cir. 2017), child-find is among the most important of the IDEA requirements, in order to identify, locate and evaluate every child in need of special education. *See* 34 C.F.R. 300.111. DCPS's child-find obligations are triggered either by awareness of the child's circumstances or by parental request. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 57 (D.D.C. 2011). While the requirements of child-find certainly do not mean that DCPS must "conduct a formal evaluation of every struggling student," *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012), this Hearing Officer concludes for the reasons below that DCPS should have evaluated Student to determine whether Student had a disability based on the high level of behavioral/disciplinary problems and low level of academic performance, and also because of Parent's requests.

Student has long had significant behavioral and disciplinary problems, beginning in the earliest school years when Student urinated on one child and sexually assaulted another. In 2012/13, Student was referred for counseling services by a teacher who considered the situation very urgent, with a range of issues, including kicking and hitting peers. In 2014/15, Student was again referred for counseling at school. That year ChAMPS, an emergency response service for children, also provided crisis screening and worked with Student. In 2014/15, Student had 31 infractions, including 8 off-site suspensions totaling 17 days, ranging from fighting and injuring another student to angrily shattering a school window. While Prior Public School conducted an FBA dated 4/21/15 due to Student physically and verbally aggressive behaviors towards other students and adults, along with other issues, the FBA's recommendation that an MDT should convene to consider the implications of the assessment did not result in an evaluation.

Parent had obtained a mental health evaluation of Student from Mental Health Provider where Student was diagnosed with ODD. Parent gave the evaluation to the Prior

Public School principal, who responded that it had nothing to do with school and that Parent needed to get outside help for Student, threatening to call Child Protective Services and allege neglect of Student by Parent. Rather than trying to assist Student, Prior Public School asked that Student not return to Prior Public School, so Parent enrolled Student in Recent Public School, the neighborhood school.

Parent credibly testified that Student's 2 years at Recent Public School were even worse than at Prior Public School, as Student became more aggressive. But Recent Public School did not provide paperwork for suspensions, so there is no documentation. Instead, the Recent Public School dean would call Parent about 3 times/week to report Student's in-school suspensions or to require Parent to come remove Student from school until the dean said Student could return from the ad hoc suspension. Even though Student was receiving counseling/behavior support from both Recent Public School and Mental Health Provider, it was not sufficient to address Student's needs. Recent Public School found Student's behavior so bad that Student was not permitted to participate in significant end-of-year proceedings and festivities with peers in 2016/17.

Student's behaviors unquestionably made it difficult for Student – and sometimes peers – to learn, as Student was often off task and distracting everyone around. Indeed, during the FBA classroom observation, Student was measured as being off task 100% of the time. When ignored, Student's behaviors escalated to "disrupting" furniture before leaving the room or the office providing support to the teacher. Not surprisingly, Student's work completion rate was low, even though Student was academically capable. In fact, Mom credibly testified that Student hardly did any school work, as Student was regularly sent home or was out of the classroom at school, often in in-school suspension or just walking the halls. This negative academic impact was confirmed by Student's report card in which Student received the lowest rating in both reading and math at the end of 2016/17 and declined in 6 of 10 subjects over the year.

Respondent's counsel argued at the due process hearing that Student was involved in the RTI process, which needed to run its course before a decision could be made about evaluating Student, but School Psychologist's testimony was that Student's only involvement with RTI related to counseling for Student's behavior, and was not related to academics which might have resulted in an evaluation. Furthermore, given the level of behavioral issues that Student brought to Recent Public School, as discussed above, the undersigned is clear that 2 years was sufficient time for DCPS to complete any desired RTI processes and move forward to evaluate.

Respondent's counsel also argued that the 504 plan for Student (pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794) showed that DCPS had "found" Student for purposes of child-find and that the 504 plan could have been expanded to provide more assistance to Student. But the clear evidence at the hearing was that the 504 plan simply relating to a narrow remedy for a specific medical condition that did not address Student's academic and behavioral needs and in no way took the place of an IEP.

Accordingly, based on the facts above, this Hearing Officer concludes that Recent Public School had been put on notice and was sufficiently aware of Student's circumstances that it should have evaluated Student in 2015/16 and certainly no later than 2016/17.

Alternatively, even if Student's extensive behavioral/disciplinary issues and poor academic performance were not enough to trigger action by DCPS based on its child-find obligations, Parent's requests for evaluation of Student should have been. Parent had requested evaluations of Student at Prior Public School and credibly testified that she asked for an evaluation of Student when enrolling Student at Recent Public School for 2015/16. Parent made her request in August 2015 when talking with School Psychologist and giving her background material about Student, including some or all of the documents now included as exhibits P1 through P6. Parent again requested an evaluation of Student at various times when Parent saw School Psychologist in school meetings about Student; School Psychologist responded to Parent that Student didn't qualify for an IEP. In her testimony, Parent acknowledged that she did not request an evaluation from anyone at Recent Public School other than School Psychologist, which bolsters her credibility in the view of the undersigned, for if she sought to exaggerate it would have been easy enough to assert making other requests as well.

While Parent was understandably uncertain about many specifics relating to her requests for an evaluation which went back years, School Psychologist was surprisingly certain that she had met with Parent only one time in person, in an informal meeting School Psychologist had required to address Student's disrespect toward her. School Psychologist was certain that she had not met Parent when Student was first being enrolled at Recent Public School in August 2015 or at any other time apart from the single meeting. School Psychologist was certain that Parent had never asked for Student to be evaluated in August 2015 or any other time. Recognizing the direct conflict in testimony, the undersigned inquired how School Psychologist had such confidence that Parent never sought an evaluation of Student and that School Psychologist had met Parent only once and had not spoken to her at enrollment more than 2 years ago, given all the parents School Psychologist must meet on an ongoing basis. School Psychologist responded that Parent did not request an evaluation because that would have triggered a referral meeting, and since no referral meeting was ever held for Student, School Psychologist was thus certain there was never any request for an evaluation.

With over 20 years of experience, School Psychologist further testified that she can tell with many students if they are ED; she did not view Student as being ED and didn't think that Student needed an IEP. In School Psychologist's assessment, Student simply refused to do the work even though capable of it; Student was just socially maladjusted for which Student was receiving counseling at Recent Public School and Mental Health Provider. However, the undersigned considers the point of formal evaluations to be reliance on scientific analysis and avoidance of informal personal judgments, even by well experienced and competent professionals, in determining who needs to receive special education and related services.

Unable to harmonize the conflicting testimony, this Hearing Officer credits Parent's assertions that she sought an evaluation of Student in August 2015 and concludes that it was

a child-find violation for Recent Public School not to evaluate Student based on parental request.

DCPS vigorously argued that since Student is now enrolled at Public Charter School, Parent should simply request an evaluation there and seek no remedy from DCPS. That argument is unavailing, for the harm resulting from the child-find violation needs a remedy. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 245, 129 S. Ct. 2484, 2495, 174 L. Ed. 2d 168 (2009) (parents must have a remedy if a school district unreasonably fails to identify a child with disabilities pursuant to child-find).

As the Court of Appeals explained in *Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015),

> If a school district fails to satisfy its "child-find" duty or to offer the student an appropriate IEP, and if that failure affects the child's education, then the district has necessarily denied the student a free appropriate public education. *See Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (a FAPE denial is actionable if it "affect[s] the student's substantive rights") (emphasis omitted).

Here, failure to evaluate Student in 2015/16 and 2016/17 potentially deprived Student of substantial educational benefits, and significantly impeded Parent's ability to engage in decision-making concerning the services necessary for Student to receive a FAPE. *See* 34 C.F.R. 300.513(a)(2). This Hearing Officer concludes that DCPS denied Student a FAPE by failing to meet its child-find obligations when it did not conduct a comprehensive psychological evaluation due to Student's circumstances or due to parental request.

## Remedy

The IDEA gives Hearing Officers "broad discretion" to provide an equitable remedy for students who have been denied a FAPE. *See Reid ex rel. Reid v. Dist. of Columbia*, 401 F.3d 516, 522-23 (D.C. Cir. 2005); *B.D. v. Dist. of Columbia*, 817 F.3d 792, 797-98 (D.C. Cir. 2016); *Hill v. Dist. of Columbia*, 2016 WL 4506972, at *25 (D.D.C. 2016) (IDEA prescribes broad discretion in fashioning relief for educational deprivation).

Here, Petitioner has chosen to defer any consideration of compensatory education in this decision, awaiting the completion of the independent comprehensive psychological evaluation she is seeking as the remedy in this case. Having prevailed on her child-find claim above, Parent is indeed entitled to an independent comprehensive psychological evaluation, with the only remaining issue being the rate to be authorized. Parent should have a choice of providers for an independent evaluation. *See, e.g., Letter to Kirby*, 213 IDELR 233 (OSERS May 4, 1989) (to avoid unreasonable charges a district may establish a maximum rate for IEEs, but that maximum rate must allow parents to choose from among the qualified professionals in the area); *M.V. v. Shenendehowa Cent. Sch. Dist.*, 2013 WL 936438, at *7 (N.D.N.Y. Mar. 8, 2013) (existence of several willing providers needed to show reasonableness of IEE fee cap). In practical terms that means Parent cannot be limited to the OSSE rate, which DCPS generally uses as the maximum it authorizes for independent

evaluations. Educational Advocate credibly testified that Parent would not have a reasonable choice of providers – and possibly no provider at all – if limited to the OSSE rate, but would have a suitable choice of providers if the comprehensive psychological evaluation were authorized at a rate of $3,000 or $3,500. The undersigned has incorporated the lower figure in the following order.

## ORDER

Petitioner has prevailed on the issue in this case. Accordingly, **it is hereby ordered that:**

Within 10 business days, DCPS shall provide authorization to Petitioner in the amount of $3,000 for an independent comprehensive psychological evaluation.

Any and all other claims and requests for relief are **dismissed with prejudice**, except that this decision is without prejudice to Petitioner's right, if any, to seek compensatory education for the denial of FAPE found herein.

**IT IS SO ORDERED.**

Dated in Caption

/s/ *Keith Seat*
Keith L. Seat, Esq.
Hearing Officer

## NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

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